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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 SCOTT C. SMITH,

8 Plaintiff,

9 v.

10 CAROLINE HARDY, et al.,

11 Defendants.  
12

No. C06-5455-RBL/KLS

ORDER GRANTING COSTS ON APPEAL

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14 This matter has been remanded and re-referred to the undersigned following reversal of  
15 this Court's Order (Dkt. # 42) granting summary judgment in favor of Defendants on all of  
16 Plaintiff Scott C. Smith's claims. Dkts. # 50 and 51. On remand, the Ninth Circuit directed this  
17 Court to address qualified immunity and Plaintiff's third claim for failure to supervise and train  
18 in light of its summary disposition. Dkt. # 50.

19 Before the Court is Plaintiff Scott C. Smith's Bill of Costs. Dkt. # 53. Mr. Smith seeks  
20 to recover the Ninth Circuit Court of Appeals filing fee applicable to his appeal of the District  
21 Court's summary judgment order. *Id.* On August 13, 2007, the Ninth Circuit Court of Appeals  
22 granted Mr. Smith leave to proceed in forma pauperis in his appeal and directed the appropriate  
23 prison officials to assess, collect and forward to the District Court the filing and docketing fees  
24 for the appeal pursuant to 28 U.S.C. § 1915(b)(1) and (2). Dkt. # 49.  
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ORDER GRANTING COSTS ON APPEAL- 1

1 Mr. Smith filed his Bill of Costs on February 13, 2009. Id. The Ninth Circuit filed its  
2 mandate on February 6, 2009. Dkt. # 51. Defendants have filed no opposition to Mr. Smith's  
3 Bill of Costs.

4 Mr. Smith states that partial payment of the \$455.00 filing fee has been made from his  
5 prison account and the remainder is considered a lien against his prison account. Dkt. # 53, p. 1.  
6 A review of amounts received from Mr. Smith's prison account reflects that filing fees of  
7 \$350.00 each, remain owing in Mr. Smiths' District Court Case Nos. 06-5455, 06-5712 and 07-  
8 5108. To date, the amount of \$304.98 has been deducted from his prison account and applied  
9 toward these filing fees. Mr. Smith's prison account will continue to be deducted for these fees.  
10 No deductions have been applied toward payment of the appellate filing fee.

12 Pursuant to Federal Rule of Appellate Procedure 39(e)(4), the fee for filing the notice of  
13 appeal is taxable in the district court for the benefit of the party entitled to costs under the rule.  
14 Accordingly, Mr. Smith's Bill of Costs (Dkt. # 53) is **GRANTED**. Accordingly, it is

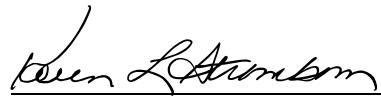
15 **ORDERED:**

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- 17 (1) The \$455.00 filing fee is taxed against Defendants; Defendants shall pay the \$455.00  
18 filing fee to the District Court Clerk.
- 19 (2) The Clerk of Court shall serve this Order on the Attorney General for the State of  
20 Washington, P.O. Box 40116, Olympia, Washington 98504-0116, Attn: Criminal  
21 Justice Division, who shall notify the appropriate agency or prison authority  
22 responsible for calculating, collecting and forwarding the monthly payments from Mr.  
23 Smith's account, to cancel the collection of any said monthly payments from Mr.  
24 Smith's account for the collection of the appeal fee in *Scott C. Smith v. Caroline*  
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1 *Hardy, et al.*, Ninth Circuit Court of Appeals Docket No. 07-35430. (This Order  
2 discontinues the Order of the Court of Appeals set forth at Dkt. # 49).

3 (3) The Clerk of Court is directed to send a copy of this Order to Plaintiff and to counsel  
4 for Defendants.

5 DATED at Tacoma, Washington this 8th day of April, 2009.  
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9 Karen L. Strombom  
10 United States Magistrate Judge  
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